

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WAYNE PRATER
[#760404]

v.

COMMONWEALTH OF PENNSYLVANIA, et al.

: CIVIL ACTION
:
:
:
:
:
:
:
:
NO. 11-7893

REPORT AND RECOMMENDATION

M. FAITH ANGELL
UNITED STATES MAGISTRATE JUDGE

July 16, 2012

Presently before this Court is a *pro se* Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. §2241 by a state prisoner. Petitioner Wayne Prater is currently incarcerated at Curran-Fromhold Correctional Facility where he is awaiting sentencing after a jury trial in the Philadelphia Court of Common Pleas. For the reason which follow, it is recommended that Mr. Prater's habeas claims be denied and dismissed as moot.

I. BACKGROUND AND PROCEDURAL HISTORY¹

Petitioner is presently incarcerated awaiting sentencing in four cases which were consolidated in the Court of Common Pleas of Philadelphia County. *See* Court of Common Pleas of Philadelphia County Criminal Docket Numbers CP-51CR-0002465-2010, CP-51-CR 0008413-2010, CP-51-CR-0008416-2010, CP-51-CR-0000375-2011.² The state criminal case challenged by Mr. Prater in his present application for federal habeas corpus review and relief, however, is Case Number MC-51-

¹In preparing this Report and Recommendation, I have reviewed the following documents: Mr. Prater's §2241 Habeas Petition, the Commonwealth's Response, and the state court record.

²Hereinafter "State Court Docket(s)".

MD-0000254-2011. *See* §2241 Habeas Corpus Petition³ at 2. In that action, the Honorable Denis P. Cohen found Petitioner in contempt on November 7, 2011, for violating the Court's order prohibiting him from having any contact with the complainant, Ms. Mason. *See* State Court Docket MC-51-MD-0000254-2011. Mr. Prater was sentenced on that date to a term of incarceration of two months and 28 days to five months and 29 days. *Id.* The Court further ordered that Petitioner would not be eligible for parole or for "good time" or "earned time", and he was again instructed not to have any contact of any nature with the victim. *Id.* On June 5, 2012, Mr. Prater was granted parole in that matter, effective immediately. A Stay Away order was also issued. *Id.*

On December 27, 2011, Mr. Prater signed and dated the instant petition for habeas corpus relief, and it was filed in this Court on December 29, 2011. In seeking relief from pretrial detention (*See* Petition at 2), he raises the following claims:

Ground One: The illegal waiver of my prompt trial rights by the Court of Common Pleas in Philadelphia, Judge Denis P. Cohen and court appointed attorney George Yacoubian.

Ground Two: Judge Cohen refused to recuse himself from the case, when his court calend[a]r is over booked. Judge Cohen in his court he refuses to render a judicial ruling in the matters at hand, when the ruling is overdue.

Ground Three: Judge Cohen refused to give me any credit for any of the time that I've been incarcerated towards my contempt charge. I've been in custody from 8-20-10 to present date.

Ground Four: Court appointed attorney's refused to interview any witness in my cases and refuses to communicate with me when it's my life on the line. Attorney's refuses to put in any motions or appeals when asked, when they work for me.

Petition at 3-6. The Commonwealth denies that Mr. Prater is entitled to federal habeas relief because

³Hereinafter "Petition".

he has failed to establish any entitlement to federal habeas relief based on any of his claims. *See* Commonwealth's Response at 4.

II. DISCUSSION

The relief sought by Petitioner in this petition is that of pretrial release. As revealed in the State Court Docket, the matter at issue is not in a pretrial status. Mr. Prater has been found in contempt "in violation of order no contact with complaint". State Court Docket MC-51-MD-0000254-2011 at 3. He was sentenced in this case "to 2 months 28 days to 5 months 29 days for contempt of violation of order; no parole, no good time, earned time", and he is now on parole, with a Stay Away order. *Id.* His petition for pretrial release is moot.

RECOMMENDATION

For the reasons stated above, it is recommended that the Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. §2241, be DENIED AND DISMISSED AS MOOT. It is further recommended that a finding be made that there is no probable cause to issue a certificate of appealability.⁴

BY THE COURT:

S/M. FAITH ANGELL
M. FAITH ANGELL
UNITED STATES MAGISTRATE JUDGE

By E-mail: Hon James Knoll Gardner
Anne Palmer, Esq. anne.palmer@phila.gov

By Mail: Wayne Prater
#760404
7901 State Road
Philadelphia, PA 19136

⁴Petitioner is advised that he may file objections to this Report and Recommendation. *See* Local R.Civ.P. 72.1. Failure to file timely objections may constitute a waiver of any appellate rights.